United States District Court
For the Northern District of California

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** E-filed March 18, 2011 **

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7   NOT FOR CITATION

8   IN THE UNITED STATES DISTRICT COURT

9   FOR THE NORTHERN DISTRICT OF CALIFORNIA

10   SAN JOSE DIVISION

11   APOLONIA SALINAS, et al.,   No. C09-04541 HRL

12   Plaintiffs,   **ORDER GRANTING DEFENDANT'S**
         v.   **COUNSEL'S MOTION TO**
13   **WITHDRAW**
     LAVENDER INVESTMENT, INC., et al.,
14   **[Re: Docket No. 25]**
              Defendants.
15   _____/

16   Apolonia Salinas and Faustino Cortez ("Plaintiffs") brought this wage-and-hour action

17   against their former employer Lavender Investment, Inc. d/b/a/ Ma's Restaurant ("Lavender") and

18   Tohn Shieh ("Shieh"). In November 2010, Plaintiffs executed separate settlement agreements with

19   Lavender.[1] Thereafter, Lavender notified its counsel, Hopkins & Carley, that it does not wish to

20   continue to be represented by them anymore. Docket No. 25-1 ("Pyne Decl.") ¶4. Accordingly,

21   Hopkins & Carley now moves to withdraw from this case. Docket No. 25 ("Motion").[2]

22   Under this District's civil local rules, "[c]ounsel may not withdraw from an action until

23   relieved by order of Court after written notice has been given reasonably in advance to the client and

24   to all other parties who have appeared in the case." Civ. L. R. 11-5(a). Moreover, "[w]hen

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26   [1] Apparently, Lavender has not fulfilled its obligations under the settlement agreements. Thus
     Plaintiffs have filed a motion to enforce the terms of the purported settlement agreements. Docket
27   No. 22.

28   [2] According to their proof of service, Hopkins & Carley served a copy of its motion to withdraw on
     Plaintiffs and Lavender on February 8, 2011. However, Hopkins & Carley did not serve Shieh as
     Shieh has not yet appeared in this case.

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1   withdrawal by an attorney from an action is not accompanied by simultaneous appearance of

2   substitute counsel or agreement of the party to appear *pro se*, leave to withdraw may be subject to

3   the condition that papers may continue to be served on counsel for forwarding purposes . . . , unless

4   and until the client appears by other counsel or *pro se*. When this condition is imposed, counsel

5   must notify the party of this condition. Any filed consent by the party to counsel's withdrawal under

6   these circumstances must include acknowledgment of this condition." Civ. L. R. 11-5(b). In

7   addition, "[a] corporation, unincorporated association, partnership or other such entity may appear

8   only through a member of the bar of this Court." Civ. L. R. 3-9(b).

9   Since Lavender is a corporation, it may only appear in this action through an attorney; it may

10   not appear *pro se*. In his declaration, Lavender's counsel states that he has "explained the potential

11   consequences of [Hopkins & Carley's] withdrawal to [Lavender], and [Lavender] has confirmed its

12   desire for no further representation by Hopkins & Carley." Pyne Decl. ¶ 4.

13   Since Lavender has told Hopkins & Carley that it does not wish to continue to be

14   represented by them, good cause exists to allow them to withdraw. Accordingly, Hopkins &

15   Carley's motion is GRANTED.[3] However, since Lavender's counsel makes no mention of the

16   simultaneous appearance of substitute counsel and Lavender may not appear *pro se*, the withdrawal

17   is subject to the condition that papers may continue to be served on Hopkins & Carley for

18   forwarding purposes unless and until Lavender appears by other counsel. Hopkins & Carley shall

19   notify Lavender of this condition.

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21   **IT IS SO ORDERED.**

22   Dated: March 18, 2011

23   _____
     HOWARD R. LLOYD
     UNITED STATES MAGISTRATE JUDGE

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     [3] Pursuant to Civil Local Rule 7-1(b), the Court finds the matter suitable for determination without oral argument, and the March 22, 2011 hearing is vacated.

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United States District Court
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1 **C09-04541 HRL N**otice will be electronically mailed to:

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5 **Counsel are responsible for distributing copies of this document to co-counsel who have not registered for e-filing under the court's CM/ECF program.**

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